***THE HON'BLE THE ACTING CHIEFJUSTICE BILAL NAZKI**

AND

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NOs. 21008, 21498, 21025, 21026, 21027, 21265, 21322, 21323, 21506, 21507, 21508, 21512, 21515, 21530, 21560, 21561, 21602, 21616, 21975, 21976, 21977, 21988, 21604, 21673, 21725, 22066, 22142, 22198, 22206, 22320, 22321, 22322, 22430, 22429, 22431, 22626, 22679, 23184, 23688, 24341, 24978, 25389, 26430, 26437 OF 2006, 132, 133, 311, 330, 436, 525, 1134, 1462, 1730, 2091, 1928, 3992, 4081, 3216, 2957, 4758, 6302, 7125, 8154, 8088, 11672, 12847, 10030, 13951, 14552, 15569, 15560, 17318, 17707, 18244 AND 19747 of 2007

COMMON ORDER:

% DATE: 30-11-2007

W.P.No.21008 of 2006

Sri K.Srinivas

…. Petitioner

Vs.

$ The Government of A.P., rep., by its Principal Secretary, Transport Roads & Buildings Department, Secretariat, Hyderabad and two others.

…. Respondents

! Counsel for the Petitioner: Sri B.Sivarama Krishnaiah

^ Counsel for the Respondents: Advocate General

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> HEAD NOTE:

? Cases referred

[1] 2004(2) ALD 225

2 AIR 1992 Rajasthan 181

3 (2004)1 SCC 320

[4] AIR 1988 SC 240
[5] (1996) 9 SCC 284
[6] AIR 1975 SC 17
[7] AIR 1961 SC 232
[8] AIR 1962 SC 1406
[9] 2006(11) SCALE 28
[10] 2006(8) SCC 613
[11] AIR 1967 SC 1575
[12] 1984(1) SCC 168
[13] AIR 1996 SC 1627
[14] AIR 1976 SC 1031
[15] (1970) 1 SCC 749
[16] AIR 1965 SC 1387
[17] 1995 Suppl (2) SCC 187
[18] AIR 1980 SC 1547
[19] (2001) 3 SCC 654
[20] (2001) 3 SCC 654
[21] (1959 (1) AnW.R. 347
[22] (1992(3) SCC 336
[23] (1985) 2 SCC 732
[24] (1985) 1 SCC 591
[25] (2003) 7 SCC 66)
[26] AIR 1967 SC 389
[27] AIR 1977 SC 3471
[28] AIR 1963 SC 1083
[29] (1989) 3 SCC 151
[30] (2003(7) SCC 589
[31] (2004(2) SCC 657
[32] (2005(3) SCC 551
[33] (AIR 1961 SC 1596
[34] (1957) SCR 51
[35] (1955)2 SCR 483
[36] 1959 Supp (2) SCR 256
[37] (1946) AC 32
[38] AIR 1966 SC 1172
[39] AIR 1998 SC 2230
[40] AIR 1989 SC 155
[41] (1966)1 SCR 367
[42] (AIR 1944 PC 71)
[43] (2004) 5 SCC 209
[44] 2004(8) SCC 173
[45] (1999) 3 SCC 346
[46] (1999) 8 SCC 667

[47](1999)4 SCC 192
[48]2001(3) SCC 76
[49]AIR 1967 SC 135
[50]AIR 1961 SC 609
[51]AIR 1966 SC 1295
[52]2001(6) ALD 402 (FB)
[53]AIR 1975 SC 596
[54]AIR 1991 SC 1117
[55](1947) 15 ITR 302
[56]1926 AC 37
[57]AIR 1998 SC 2291
[58](AIR 1961 SC 552)
[59](2001) 7 SCC 358
[60] AIR 1965 SC 1321

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WRIT PETITION NOs. 21008, 21498, 21025, 21026, 21027, 21265, 21322, 21323, 21506, 21607, 21508, 21512, 21515, 21530, 21560, 21561, 21602, 21616, 21975, 21976, 21977, 21988, 21604, 21673, 21725, 22066, 22142, 22198, 22206, 22320, 22321, 22322, 22430, 22429, 22431, 22626, 22679, 23184, 23688, 24341, 24978, 25389, 26430, 26437 OF 2006, 132, 133, 311, 330, 436, 525, 1134, 1462, 1730, 2091, 1928, 3992, 4081, 3216, 2957, 4758, 6302, 7125, 8154, 8088, 11672, 12847, 10030, 13951, 14552, 15569, 15560, 17318, 17707, 18244 AND 19747 of 2007

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

In these batch of writ petitions the petitioners, transport operators whose vehicles are covered by subsisting permits valid to ply as contract carriages in the State of Andhra Pradesh, have questioned the

vires of Section 3-A of the Andhra Pradesh Motor Vehicles Taxation Act, as inserted by the Andhra Pradesh Motor Vehicles Taxation (Amendment) Act, 2006 (Act 33 of 2006), and the notification issued in G.O.Ms. No. 180, Transport, Roads & Buildings (Tr.I) Department dated 27.09.2006.

The Government of Andhra Pradesh had, hitherto, issued G.O.Ms. No. 77 dated 01.06.2002 prescribing a new rate of tax of Rs. 3500/- per seat per quarter in respect of stage carriages plying a distance exceeding 1000 km a day. On a challenge thereto a Larger bench of this Court, in **L. Royal Reddy Vs. Government of Andhra Pradesh**[1], had held that, since the charging section under the A.P. Motor Vehicles Taxation Act did not authorize levy of additional tax in case of violation of the permit or its conditions, para 1(iii), para 3 and Explanation VI (iv) of para 5 of G.O.Ms. No. 77 dated 01.06.2002 was invalid. Consequent thereto, the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (hereinafter referred to as the Act), was amended by insertion of Section 3-A and the notification in G.O.Ms. No. 180, Transport, Roads & Buildings (Tr.I) Department, dated 27.09.2006 was issued amending the notification in G.O.Ms. No. 68 dated 13.04.2006.

Sri E. Manohar, Learned Senior Counsel, Sri Noushad Ali and Sri B. Sivaramakrishnaiah, Learned Counsel for the petitioners made elaborate submissions on the vires of Section 3-A of the Act and the notification in G.O.Ms.No.180 dated 27.9.2006. Learned Advocate General appeared on behalf of the respondents and, after putting forth extensive oral arguments, also filed his written submissions.

SECTION 3-A: IS IT BEYOND THE LEGISLATIVE COMPETENCE OF THE STATE LEGISLATURE:

The vires of Section 3-A of the Act is under challenge on the ground that motor vehicles tax can be levied only as a compensatory

measure for use of the roads and not as a penalty, that Sections 53(1)(d), 66, 86(1)(a), and 192-A(1) of the Motor Vehicles Act, 1988 are penal provisions for violation of permit conditions and, as the field is occupied by the Motor Vehicles Act, 1988, (a law made by Parliament under Entry 35 of List III), the State Legislature is denuded of the power to make a law levying motor vehicles tax as a measure of penalty and Section 3-A, which enables the State Government to do so, is repugnant to the penal provisions of the Motor Vehicles Act, 1988 and, in the absence of assent of the President, is ultravires and illegal. Reliance is placed on **Inder Kumar Goyal Vs. State of Rajasthan**[2], **M.P. AIT Permit Owners Association Vs. State of M.P.**[3], **L. Royal Reddy**[1], **M. Narasimhaiah Vs. Deputy Commissioner for Transport, Bangalore**[4], and **State of Karnataka Vs. N. Madappa**[5].

Learned Advocate General would submit that the Motor Vehicles Act, 1988, (enacted by Parliament under Entry 35 of List III), and the A.P. Motor Vehicles Taxation Act, 1963, (enacted by the State Legislature under Entry 56 and 57 of List II), operate in their own fields and that the State Act cannot be said to have encroached upon the Central Act as long as the State enactment is referable to tax on vehicles. Learned Advocate General would contend that the penal provisions under the Motor Vehicles Act, 1988 cannot bar the State from making provisions for levy and imposition of additional tax as the levy does not amount to a penalty. According to the learned Advocate General it is the duty of the State not only to collect tax for the use of roads but also to regulate use of vehicles in accordance with the permits issued. Learned Advocate General would submit that

additional tax is also a tax and that Section 3-A, which enables levy of additional tax by the State authorities, is compensatory and regulatory and not penal in nature. He would rely on **Bolani Ores Ltd. Vs. State of Orissa**[6], **Atiabari Tea Co., Ltd. Vs. State of Assam**[7], **Automobile Transport (Rajasthan) Ltd., etc Vs. State of Rajasthan**[8], **Prithipal Singh Vs. State of Punjab**[9] and **Hardev Motor Transport Vs. State of M.P.**[10].

Under Entry 35 of List III, both Parliament and the State Legislatures are empowered to legislate in respect of mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied. Entry 57 of List II empowers the State Legislature to make a law in respect of taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of Entry 35 of List III. While Entry 57 of List II relates only to taxes on motor vehicles, Entry 35 of List III deals also with the principles on which taxes on such vehicles are to be levied. The two entries deal with two different matters though allied - one deals with taxes on vehicles and the other with the principles on which such taxes are to be levied. Taxes on vehicles, in their ordinary meaning, connote the liability to pay taxes at the rates at which taxes are to be levied. On the other hand, the expression 'principles of taxation' denotes rules of guidance in the matter of taxation. (**State of Assam Vs. Labenya Probha Debi**[11], **M/s. Bolani Ores Ltd**[6] **M.Narsimhaiah**[4], **N. Madappa**[5]). While Parliament may also lay down guidelines for levy of taxes on mechanically propelled vehicles, the right to levy such taxes vests solely in the State Legislature. (**B.A. Jayaram Vs. Union of India**[12]).

Whenever a legislation is said to be beyond the legislative

competence of a State Legislature, what one must do is to find out, by applying the rule of pith and substance, whether that legislation falls within any of the entries in List II. If it does, no further question arises; the attack upon the ground of legislative competence shall fail. It cannot be that even in such a case, Article 246(3) can be employed to invalidate the legislation on the ground of legislative incompetence of the State Legislature. If, on the other hand, the State legislation in question is relatable to an entry in List III applying the rule of pith and substance, then also the State legislation would be valid, subject to a Parliamentary enactment inconsistent with it, a situation dealt with by Article 254. (**State of A.P. Vs. Mc.Dowell & Co**[13]).

It cannot, however, be lost sight of that Entry 57 of List II is itself made "***subject to***" Entry 35 of List III which would only mean that notwithstanding the general terms in Entry 57 of List II, the specific terms in Entry 35 of List III shall take effect. This is also on the principle that the "special" excludes the "general" and the general entry in Entry 57 of List II is subject to the special entry in Entry 35 of List III. (**K.S.E. Board Vs. Indian Aluminium Co.**[14]). The State legislation levying tax on motor vehicles must not only conform to the principles of taxation laid down in the law made by Parliament under Entry 35 of the concurrent list, it must also not run contrary to the provisions of such a law relating to mechanically propelled vehicles.

To find out whether a piece of legislation falls within a particular Entry, its true nature and character must be in respect of such an Entry. The Entries must receive a liberal interpretation as the few words of the Entry are intended to confer vast and plenary powers. (**Second Gift Tax Officer Vs. D.H. Nazareth**[15]). The Court, in determining the scope of the area covered by a particular Entry, must interpret the

relevant words in the Entry in a natural way and give the said words the widest interpretation. (**Banarasi Dass Vs. Wealth Tax Officer**[16]). It must also borne in mind that when the vires of an enactment is impugned, there is an initial presumption of its constitutionality. If there exists any difficulty in ascertaining the limits of the legislative power it must be resolved, as far as possible, in favour of the legislature, putting the most liberal construction on the legislative entry so that it is intra vires. (**P.N. Krishna Lal Vs. Govt. of Kerala**[17]).

Entry 57 of List II enables the State Government to levy a tax on all motor vehicles *suitable for use on roads*. (**Travancore Tea Co Ltd Vs. State of Kerala**[18]). Such taxes are in the nature of regulatory and compensatory measures and are levied for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and to facilitate the movement and regulation of traffic. (**M/s. Bolani Ores Ltd.**[6]). The regulatory and compensatory nature of the tax requires the power to impose taxes to be exercised on such motor vehicles which use the roads in the State or are kept for use thereon either throughout the whole area or parts thereof and are sufficient to make and maintain such roads. (**Automobile Transport (Rajasthan) Ltd.**[8]**, M/s. Bolani Ores Ltd.**[6]).

A law, enabling imposition of taxes on motor vehicles, can be validly made under Entry 57 of List II to regulate the manner in which roads are to be used by such motor vehicles. A law providing for levy of motor vehicles tax as a penalty can, however, be made only under Entry 35 List III, and not under Entry 57 of List II, since the words "***suitable for use on roads***" used therein would limit the power to

impose taxes on motor vehicles only as a regulatory or a compensatory measure and not as a penalty.

Penal provisions relating to motor vehicles can be imposed only by a law made under Entry 35 of List III and not Entry 57 of List II. The Motor Vehicles Act, 1988, a law made by Parliament under Entry 35 of List III, contains penal provisions for use of motor vehicles without a permit or for violation of the conditions of the permit. Section 53 relates to suspension of registration and, under sub-section (1) thereof, if the registering authority has reason to believe that any motor vehicle has been, or is being, used for hire or reward without a valid permit for being used as such, he may, after giving the owner an opportunity of making a representation, and for reasons to be recorded, suspend the certificate of registration of the vehicle. Chapter V relates to control of transport vehicles and, under Section 66(1), no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place and in the manner in which the vehicle is to be used. Section 86 relates to cancellation and suspension of permits and, under sub-section (1), the transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit (a) on breach of any condition specified in Section 84 or of any condition contained in the permit or (b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorized by the permit. Section 192-A relates to using a vehicle without a permit and, under sub-section (1), whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention

of the provisions of Section 66(1) or of any condition of a permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be liable to be punished.

What is required to be determined is whether Section 3-A of the Act is regulatory and compensatory or is it in the nature of a penalty. If it is the former, then the State Legislature must be held to have the legislative competence to make such a law under Entry 57 of List II. However, if it falls in the latter category then, penal provisions having already been prescribed under the Motor Vehicles Act, 1988 an additional penal provision in the A.P. Motor Vehicles Taxation Act, 1963, in the absence of the assent of the President thereto, would fall foul of and be repugnant to the Motor Vehicles Act, 1988. When offences under the law made by Parliament and the State Legislature respectively are substantially identical, but additional penalties are imposed for the contravention by the provisions of the State law, it would be inconsistent with the law made by the Parliament and, therefore, invalid. (**M.P. AIT Permit Owners Assn.**[3]).

In adjudging whether a tax is regulatory/compensatory or it is penal in nature, the true character of the tax has to be determined. (**Municipal Council, Kota, Rajasthan Vs. Delhi Cloth & General Mills Co. Ltd.**[19]). It is not the nomenclature used or chosen to christen the levy that is relevant or determinative of the real character or the nature of the levy. What has to be examined is the pith and substance of the levy which has to be adjudged, with reference to the charge, viz., the taxable event and the incidence of the levy. (**Municipal Council, Kota, Rajasthan Vs. Delhi Cloth & General Mills Co. Ltd.,**[20]). To ascertain the essential character of the tax, the charging section has to be examined as the identification of the subject-matter of the tax is only to be found therein. (**T.**

Aswathanarayana Vs. The State of Andhra by the Secretary, dealing with Commercial Taxes, Government of Andhra, Kurnool, (now Andhra Pradesh, Hyderabad)[21]).

Section 3 of the Act enables the State Government, by notification, to direct that a tax shall be levied on every motor vehicle used or kept for use in a public place in the State. The notification is required to specify the class of motor vehicles of which and the rates at which taxes shall be levied. Power is conferred on the State Government, under Section 3(2), to prescribe different rates of taxes for different classes of motor vehicles. It is evident that Section 3(1), which enables the Government to levy a tax on motor vehicles used or kept for use in a public place, is regulatory and compensatory.

Section 3-A, as inserted by A.P. Amendment Act 33 of 2006 and which is deemed to have come into force with effect from 1st June, 2002, reads thus:

"3-A(1) Notwithstanding anything contained in Section 3, it shall be competent for the Government to provide for levying an additional tax in respect of a motor vehicle specified in one category or class notified under section 3, if misused or used not in accordance with the purpose for which the vehicle was registered, or the permit was granted, attracting higher rate of tax as a vehicle falling in another category or class:

Provided that the additional tax so levied shall be a sum equal to the difference of amount between the tax already levied and collected and the tax which shall be leviable in respect of such vehicle falling in another category.

(2) The registered owner or the person who is in possession or control of such vehicle misused or used not in accordance with the purpose for which the vehicle was registered or the permit was granted, shall pay the additional tax so levied under sub-section(1)."

Section 3-A enables the Government to levy additional tax in cases where a motor vehicle specified in one category or class is misused as a vehicle falling under another category or class. It is only in cases where the vehicle is misused, or is not used in accordance

with the purpose for which it was registered or the permit granted, is the Government empowered to levy an additional tax.

As noted above, Entry 57 empowers legislation in respect of vehicles suitable for "***use on the roads***". All that is necessary to uphold a tax which purports to be or is claimed to be a regulatory or compensatory tax is the existence of a specific, identifiable object behind the levy and a nexus between the subject and the object of the levy. (**B.A. Jayaram**[12]). By virtue of Entries 56 and 57 of List II, the State Legislature has the power to make a law to compensate for the services, benefits and facilities provided by it for motor vehicles operating on roads within the territory of the State. The State Legislature has also the power to levy a tax to regulate the manner in which the motor vehicles use the roads and to prevent them from misusing the roads contrary to the purpose for which it was registered and the conditions subject to which the permit was granted. Taxes resulting from such legislative activity are, by their very nature, regulatory and compensatory. The nexus between the levy and its object is patent in the case of such taxes. (**B.A. Jayaram**[12]). The words "***suitable for use on the roads***" in Entry 57 when liberally construed and given a wide interpretation would include within its ambit prevention of misuse of motor vehicles on the roads and the power to levy tax for misuse of the conditions of permit, which is but a step in the process of preventing misuse of motor vehicles on the roads, is only a regulatory measure under Entry 57 of List II and not a penalty under Entry 35 List III. The levy under Section 3-A is to regulate motor vehicles and ensure that they are used on the roads in accordance with the purpose for which they were registered and the

conditions subject which the permit was granted. As Section 3-A is regulatory and is not in the nature of a penalty, it is a law referable to Entry 57 of List II and is well within the legislative competence of the State legislature. Challenge to the vires of section 3-A on the ground of lack of legislative competence must, therefore, fail.

Reliance is placed on behalf of the petitioners on a division bench judgment of the Rajasthan High Court, in **Inder Kumar Goyal[2]**, to contend that a provision, identical to Section 3-A of the Act, in the Rajasthan Motor Vehicles Taxation Act was struck down on the ground that it was in the nature of a penalty. It is, therefore, necessary to examine the said judgment in some detail. Section 4B(3) of the Rajasthan Motor Vehicles Taxation Act, the vires of which was under challenge in **Inder Kumar Goyal[2]**, reads thus:

> "Where a transport vehicle is used without a valid permit or in any manner not authorised by the permit, there shall be levied and paid to the State Government further special road tax in addition to the tax payable under sub-sec. (1) on such vehicle at the rate fixed by notification not exceeding the maximum rate specified in this behalf in Schedule A".

The division bench of the Rajasthan High Court, in holding it to be ultra-vires on the ground of lack of legislative` competence, observed:-

> …….**Power to impose tax, which are in the nature of regulatory and compensatory measure vest with the State Legislature under Entry 56 of List II of Seventh Schedule. Entry 57 of List II empowers the Legislatures in respect of tax on vehicles suitable for use on roads. The powers exercisable under Entry 57 is also a power to impose tax, which are in the nature of regulatory and compensatory measures**. In Automobile Transport Rajasthan Ltd. v. State of Rajasthan, (1963) 1 SCR 491, it was held by their Lordships of the Supreme Court that the tax on motor vehicles is a compensatory tax levied for the use of vehicles and it is not a tax on trade. The object of the act is achieved by charging to tax motor vehicles suitable for use on roads kept in the State….
> …….A perusal of Ss. 4 (1) and 4 (2) shows that the tax is levied on motor vehicles used or kept for use in the State. Surcharge is levied at the rate of

10% of the tax imposed..... S. 4b (3) provides for imposition of further special road tax, which is in addition to the tax payable under S. 4b (1). There are two situations under which tax under S. 4b (3) can be levied. First is, where a transport vehicle is used without valid permit and the second is, that where a transport vehicle is used in any manner not authorised by permit. Thus, ordinarily, a transport or non-transport vehicle is liable to pay tax, surcharge and special road tax under Ss. 4, 4a and 4b (1). However, those transport vehicles which are used without a valid permit or in any manner not authorised by permit, an additional special road tax has to be paid as per S. 4b (3). **So far as S. 4b (3) is concerned, it does not say that this additional road tax is to be paid with reference to user of the vehicle or road. It is clearly not a tax on the road or on a vehicle or on passenger. According to the assertion made by the respondents themselves it is the additional special road tax imposed for vehicles plying without licence or in contravention with the conditions of licence or permit. Those who are using the road without permit or in breach of the permit are made to pay higher special road tax**.....

.....This provision has been referred to in order to emphasise that the Act of 1951 makes specific provision to treat the breach of the provisions of that Act and the Rules made thereunder as offence, specifies the punishment which may be imposed on conviction in respect of such offence and also for compounding of offence by the prescribed officer by accepting money may extend up to the amount of tax. **However, the provisions of the Act of 1951 do not deal with the cases relating to the violation of permit or conditions of permit. Violation of permit granted under the Motor Vehicles Act or contravention of any of the conditions of permit or of the provisions relating to restrictions are dealt with under S. 123 of 1939 Act.** A specific provision has been made in that Act to deal with the cases relating to the contravention of the provisions of Ss. 22 and 42 of the Act. S. 123 (1) provides for punishment of fine for the first offence and of imprisonment which may extend to six months or with fine which may extend to Rs. 2rs. 2000. 00 or both for second or subsequent offence. Proviso to S. 123 (1) makes it obligatory for the Court to impose a fine of at least Rs. 500. 00 for any second or subsequent offence. S. 123 (1) also provides for suspension of certificate of registration or permit of the vehicle used in commission of offence. This is in addition to the sentence which may be passed under sub-section (1) of Section 123 (1). **It is clear from S. 123 (1) that a specific provision has been made in 1939 Act to deal with the cases involving contraventions of Ss. 22 and 42 of 1939 Act. Any person who plies vehicle without permit or in contravention of conditions of such permit is liable to be prosecuted and is liable to be punished in case of conviction. Source of a provision like S. 123 can be traced in Entry 93 of List I of Seventh Schedule. It is, therefore, clear that a specific provision exists to deal with the offences involving violation of S. 42, namely, where the vehicle is plied without permit or in contravention of the conditions of permit. The question now arises**

for consideration is as to whether a tax, additional tax or special tax can be imposed for an act which is offence under a provision contained in the Motor Vehicles Act, 1939 and has the State Legislature a power to legislate for imposition of tax or additional tax with reference to an act committed by a person, which is treated as an offence under the Act of 1939. Entry 56 of List II of Seventh Schedule will no doubt receive a liberal construction. However, as already noticed hereinabove, under Entry 56 tax can be imposed on goods and passengers carried by road or inland waterways. Such tax has to be compensatory or regulatory. It can be for the use of road and of the vehicle. Entry 56 of List II cannot however be interpreted to bring within its frame work the imposition of tax for an act which is offence. A person who is plying vehicle on road is liable to pay tax, surcharge, special road tax. Thus, irrespective of whether he is having a permit or not or whether he is plying the vehicle in contravention of the conditions of permit, the power vesting with the State Legislature in Entry 56 cannot be utilised for imposition of penalty in the form of tax. In our opinion, what has been done by S. 4b (3) is not the imposition of tax, but a fine or penalty for an alleged offence of plying the vehicle without a valid permit or in contravention of the conditions of permit. Such a penalty cannot be treated as a part of regulatory or compensatory tax.

In view of the above discussions, it must be held that S. 4b (3) is beyond the legislative competence of the State Legislature and is liable to be declared as ultra vires to the powers of the State Legislature……" (emphasis supplied).

We must express our inability to agree with the views expressed, in **Inder Kumar Goyal**[2], that levy of additional road tax was not with reference to the user of the vehicle or the road but was a fine or penalty for the alleged offence of plying the vehicle without a valid permit or in contravention of the conditions of the permit and that such a penalty could not be treated as a part of regulatory or compensatory tax. Neither was the scope of Entry 57 List II vis-a-vis Entry 35 List III examined in **Inder Kumar Goyal**[2], nor did the Rajasthan High Court consider that a liberal construction and a wide interpretation of Entry 57 List II would require the words "***use of the roads***" therein to include its misuse on the failure of the owner of the

vehicle to adhere either to the purpose for which the vehicle was registered or the conditions subject to which the permit was granted.

In **M. Narasimhaiah**[4], levy of additional tax under Section 8 of the Karnataka Motor Vehicles Taxation Act was under challenge. Under Section 8 if any motor vehicle, in respect of which tax had been paid, was altered or proposed to be used in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax was payable, the registered owner or person who was in possession or control of such a vehicle was required to pay additional tax or a sum which was equal to the difference between the tax already paid and the tax which was payable in respect of such a vehicle for the period for which the higher rate of tax was payable in consequence of its being altered or so proposed to be used. Item 4(2) of the Schedule to the Act related to vehicles permitted to carry more than six persons for a total mileage exceeding 100 km per day. The Supreme Court held that, in order to bring the case within the scope of Section 8, it must first be shown that there is a provision in the Act which makes a stage carriage vehicle which carries a larger number of passengers, than what it is permitted under the permit, subject to a higher rate of tax, that the highest rate of tax in respect of a stage carriage that could be levied under the Act was incorporated in clause (2) of item 4 of the Schedule and that it would have been possible to levy a higher tax on the owner only if the words “which the vehicle is permitted to carry” in item 4(2) had been omitted. In **M. Narasimhaiah**[4], the construction to be placed on Section 8 was in issue and there was no challenge to its vires.

In **N. Madappa**[5], the validity of sub-sections 4 and 5 of Section 3 of the Karnataka Motor Vehicles Taxation Act was under challenge. The Supreme Court, while examining the question whether the State

Legislature was competent to enact a law relating to levy of tax on excess passengers carried by the holder of the permit under the Motor Vehicles Act, held that under Entry 57 of List II, the State Legislature had the power to impose tax on vehicles subject to the provisions of Entry 35 of List III and, as there was no law made by Parliament occupying the field under Entry 35 of List III, the State Legislature had the power under Entry 57 of List II to make a law levying tax on vehicles. The Supreme Court, however, held that the power to levy tax at the enhanced rate on excess passengers, on finding the vehicle to have been overloaded in excess of the prescribed limit, appeared not to be consistent with the scheme under Section 8 of the Act and that the amendment was not valid in law.

In **M.P. Ait Permit Owners Association**[3], Section 16(6) of the M.P. Motor Vehicles Taxation Act was under challenge. Section 16(6) provided that where the taxation authority, upon receipt of a report about the seizure of the vehicle, was satisfied that the owner had committed an offence under Section 66 read with 192-A of the Motor Vehicles Act, and was plying a vehicle without a permit, could confiscate the vehicle seized. Section 16(6) prescribed an additional penalty of confiscation of a motor vehicle for violation of Section 66 and 192-A of the Motor Vehicles Act, 1988. It is in this context that the Supreme Court observed that, apart from what was available under Section 192-A of the Motor Vehicles Act, additional penalties were prescribed under Section 16(6) of the State Act and that when offences arising under the Union law and the State law were substantially identical, but additional penalties were imposed for the contravention by the provisions of the State law, it would be inconsistent with the law of the Union and, therefore, invalid.

In **L. Royal Reddy**[1], a Larger Bench of this Court held that, in the

absence of any provision in the Taxation Act providing for payment of a higher rate of tax for vehicles plying in deviation of the permit conditions, and as long as there was no alteration in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax was payable, no additional tax could be collected. The Larger Bench held that tax could not be levied as a fine or penalty for contravention of permit conditions since penalty could not be treated as a part of recovery of compensatory tax. It is with a view to overcome the flaw pointed out by the Larger Bench, in **L. Royal Reddy**[1], that Section 3-A was introduced in the A.P. Motor Vehicles Taxation Act, 1963.

ABSENCE OF A PROVISION FOR APPEAL: WILL NOT RENDER THE STATUTORY PROVISION ILLEGAL:

The challenge mounted to Section 3-A, on the ground that there is no provision for an appeal against the assessment made thereunder, must also fail. Absence of a provision to appeal against an order levying additional tax under Section 3-A, will not render the said Section illegal or necessitate its striking down, for it is well settled that mere absence of a corrective machinery by way of an appeal or revision by itself would not render the provision invalid especially when it is open to an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution. (**Workmen Of Meenakshi Mills Ltd. Vs. Meenakshi Mills Ltd**[22]; **Babubhai & Co. Vs. State of Gujarat**[23]).

VALIDITY OF EXPLANATION VI (iv) OF G.O.Ms. No. 180, DATED 27.09.2006:

The vires of Explanation VI (iv) of G.O.Ms. No. 180 dated 27.09.2006 is under challenge as ultravires the Charging Section 3-A.

It is contended that, pursuant to the introduction of Section 3-A, no notification was issued for levy of additional tax, that G.O.Ms.No.180 dated 27.9.2006 does not classify or prescribe any category for misuse of vehicles, that under Section 3-A additional tax cannot exceed the difference of tax payable in respect of a category or a class of vehicles to which the offending vehicle is put to i.e., if a contract carriage is misused as a stage carriage the additional tax leviable should not be more than the tax payable in respect of the stage carriage, that the State Government had already issued a notification in G.O.Ms. No. 68 dated 13.04.2006 prescribing the rates of tax in respect of stage carriages, that taxes have been prescribed according to the total distance covered by the vehicle in a day, that clause (iv) of Explanation VI is irrational besides being contrary to Section 3-A of the Act as it prescribes a tax more than the tax prescribed for a stage carriage, that in the absence of the prescription that the vehicle is an express stage carriage, as per Rule 2(1)(b) of the A.P. Motor Vehicles Rules, no tax can be collected treating a contract carriage as an express stage carriage, that the object of the Explanation is to explain the meaning and intendment of the provision and cannot in any way interfere with or change the provision since levy of tax is only on the basis of the class of motor vehicles indicated in the Schedule to the notification issued under Section 3 of the Act, that clause (iv) has been added to Explanation VI as a penalty for various categories of vehicles misused as stage carriages which, in effect, is imposition of a fine for the alleged offence of plying the vehicle without a valid permit or in contravention of the permit, that levy of such penalty cannot form part of the regulatory or compensatory tax and hence Explanation VI (iv) is ultravires the powers conferred on the State Legislature under Entry 56 and 57 of List II.

In support of his contention that Explanation VI (iv), as introduced by G.O.Ms. No. 180 dated 27.09.2006, is intra-vires Section 3-A of the Act, Learned Advocate General would submit that under Section 3 of the Act various classes/categories of motor vehicles have been notified by the Government and, in exercise of such a power, a new category was introduced by para 1 of G.O.Ms.No.180 dated 27.9.2006 i.e., "***vehicles exceeding 1000 K.Ms***", for which the rate of tax prescribed was Rs.3675/-, that the said G.O. also provides for collection of additional tax applicable to the new category at Rs.3,675/- if any vehicle is plying without a permit or if a contract carriage is misused as a stage carriage, that Section 3-A does not require a separate notification to be issued and, since Section 3-A is an enabling provision for collection of additional tax referable to the notification under Section 3, the said notification would be the basis to operate Section 3-A and that collection of additional tax is now supported by the statutory provision under Section 3-A of the Act.

According to the Learned Advocate General, once different classes/categories of vehicles are identified and notified under Section 3, as and when a vehicle is plying without a permit or a contract carriage is misused as a stage carriage, the said vehicle would be reckoned as a vehicle under the newly introduced category i.e., "***exceeding 1000 KMs***", that differential tax is liable to be collected as additional tax and that paragraphs 2 and 4 of G.O.Ms.No.180 have created a fiction referable to the new category under para 1 of the said G.O. Learned Advocate General would contend that the Government is empowered to collect additional tax from the owners of such misused vehicles as if the vehicle was a vehicle under another category or class ie., "***exceeding 1000 kms***" and, accordingly, additional tax can

be charged by virtue of Section 3-A and the legal fiction under paras 2 and 4 of G.O.Ms.No.180.

Before examining the rival contentions, it is useful to make a brief reference to the contents of G.O.Ms.No.68 dated 13.4.2006 and the amendment issued thereto in G.O.Ms. No.180 dated 27.9.2006. G.O.Ms.NO.68 dated 13.4.2006 was issued by the Government directing that a tax for a quarter shall be levied, on every motor vehicle used or kept for use in a public place in the State, at the rates specified in column (2) of the Schedule in respect of the classes of motor vehicles specified in column (1). Column (1) of the Schedule relates to classes of motor vehicles and column (2) the rate of quarterly tax for such classes of motor vehicles. Under class 1 are motor cycles, motor scooters and cycles with attachment for propelling the same by mechanical power. The second class relates to invalid carriages, the 3rd class to goods vehicles, the 4th class to motor vehicles plying for hire and used for transport of passengers, the 5th class is of motor vehicles not themselves constructed to carry any load other than water, fuel, accumulators etc, the 6th class of motor vehicles are fire engines, fire tenders and road water sprinklers, the 7th class is of omni buses with a seating capacity of more than nine and under class 8 are motor vehicles other than those liable to tax under the earlier provisions of the Schedule.

The 4th class of motor vehicles, i.e., "***motor vehicles plying for hire and used for transport of passengers***", is again sub-classified into different categories. Category (i) are vehicles which are permitted to carry in all not more than 6 persons, Category (ii) is of three wheeled vehicles permitted to carry 7 persons in all, Category (ii)(a) are

vehicles permitted to carry 7 persons in all and covered by All India Tourist Taxi permits, Category (iii) are vehicles permitted to carry more than 6 passengers and plying as stage carriages on town services routes, Category (iv) are vehicles permitted to carry more than 6 passengers and plying as stage carriages on routes other than town service routes and Category (v) are the vehicles permitted to carry more than 6 persons and plying as contract carriages. Category (iv) is again sub-divided into (a) vehicles permitted to ply as express services and (b) vehicles permitted to ply as ordinary services. Similarly category (v) is sub-divided into (a) vehicles covered by all-india permit; (b) vehicles plying on intra-state routes; (c) vehicles plying within the home district and any one contiguous district; (d) idle contract carriages not covered by any permit plying on the strength of temporary/special permits; and (e) vehicles with seating capacity of 8 to 13 covered by intra-state or inter-state permits. While Item (iv) has Explanations I to V, Item (v) has one explanation i.e., Explanation VI.

The Schedule to the notification, in G.O.Ms.No.68 dated 13.4.2006 was amended, by G.O.Ms.No.180 dated 27.9.2006, to provide for Entry (iii) after Entry (ii) in item (4)(iv)(a), clause (ii) to Explanation III to Item 4(iv), Entry (aa), after entry (a) in Item 4 V(a) and clause (iv) after clause (iii) in Explanation VI to Item 4(v).

As noted above, Item 4(iv)(a) are motor vehicles permitted to carry more than six passengers and plying as stage carriages on routes other than town service routes. In respect of such vehicles the rate of quarterly tax, for every passenger which the vehicle is permitted to carry, where the total distance permitted to be covered by the vehicle in a day does not exceed 320 kms, is Rs.1146-60 and where it exceeds 320 kms but does not exceed 1000 kms is Rs.1514-10. By virtue of the amendment, in para 1 of G.O.Ms.No.180 dated 27.9.2006,

a rate of tax of Rs.3675-00 is prescribed for such vehicles which exceed 1000 kms.

Explanation I to Item 4(iv) relates to the number of persons or passengers which a vehicle is permitted to carry. Explanation II defines "town service" route and "express service". Clause (iii) of Explanation II provides that, for the purpose of Item 4(iv)(a), 'express service' shall have the meaning of express stage carriage as defined under Rule 2(b) of the Andhra Pradesh Motor Vehicles Rules, 1989. Rule 2(b) of the A.P. Motor Vehicles Rules, 1989 defines 'express stage carriage' to mean (i) a carriage plying on city and town routes 'non-stop' or with 'limited halts' as may be prescribed by the transport authority; (ii) a carriage plying non-stop on muffasil routes of short distances as may be prescribed by the transport authority; or (iii) a carriage plying on muffasil routes with limited halts, as may be prescribed by the transport authority. Explanation III provides that the distance which is permitted to be covered by a vehicle in a day shall (i) in the case of a motor vehicle in respect of which a permit is granted under the Motor Vehicles Act, 1988 be the distance authorized to be covered according to the permits. By para 2, of G.O.Ms. No. 180 dated 27.09.2006, clause (ii) was inserted to Explanation III that in case of a motor vehicle plying without a permit, granted under the Motor Vehicles Act, the distance permitted to be covered by the vehicle in a day shall be reckoned as above 1000 kms. While item 4(v)(a) prescribes the rate of tax of Rs.3675-00 for vehicles which are permitted to carry more than 6 persons and are plying as contract carriages covered by All India Tourist Permit, the newly inserted entry (aa), by para 3 of G.O.Ms. No. 180 dated 27.09.2006, prescribes a similar rate of tax of Rs.3675-00 for a vehicle permitted to carry more than 6 persons and plying as a contract carriage on inter-state routes.

Explanation VI relates to misuse of different classes of vehicles as stage carriages. Clause (i) of Explanation VI relates to a motor cab or a motor car having a seating capacity of upto 6. Clause (ii) relates to a motor-cab having a seating capacity of 7 in all. Clause (iii) relates to maxi cabs having a seating capacity between 8 and 13. Clause (iv) of Explanation VI, as inserted by para 4 of G.O.Ms.No.180 dated 27.9.2006, provides that, where contract carriages, covered by inter-state, state wide, district wide permits and idle contract carriages are mis-used as stage carriages, tax at the rate of Rs.3675/- per seat per quarter shall be leviable.

Item 4 of G.O.Ms.No.68 dated 13.4.2006, after its amendment by G.O.Ms.No.180 dated 27.9.2006, with all its clauses and Explanations is extracted hereunder. For the sake of convenience the amendment made to the schedule, by G.O.Ms.No.180 dated 27.9.2006, is emphasized in italics:

"4.Motor vehicles plying for hire and used for transport of passengers:-

	Rs. Ps.
(i) Vehicles permitted to carry in all:	
(a) Not more than 3 persons (LMV Cycle Rickshaw) power	12-10
(b) Not more than 4 persons	105-00
(c) More than 4 persons but not more than 6 persons	326-55
(ii) Three wheeled vehicles permitted to carry (7) persons in all for every person other than the driver	200-00
(ii)(a) Vehicles permitted to carry 7 persons in all and covered by all India Tourist Taxi permits	652-05
(iii) Vehicles permitted to carry more than 6 passengers and plying as stage carriage on town services routes	
(a) In respect of vehicle permitted to ply as ordinary services, for every passenger (other than the driver and conductor) which the vehicle is permitted to	863-10

carry.

(b) In respect of vehicles permitted to ply as ordinary services, for every passenger (other than the driver and conductor) which the vehicle is permitted to carry and where the total distance permitted to be covered by the vehicle in a day:

(a) does not exceed 100 kms	346-50
(b) exceeds 100 kms but does not exceed 160 kms	516-60
(c) exceeds 160 kms but does not exceed 240 kms	648-90
(d) exceeds 240 kms	693-00

(iv) Vehicles permitted to carry more than six passengers and plying as stage carriages on the routes other than town service routes

(a) In respect of vehicles permitted to ply as express services for every passenger (other than the driver and conductor), which the vehicle is permitted to carry and where the total distance permitted to be covered by the vehicle in a day

(i) does not exceed 320 kms	1146-60
(ii) exceeds 320 kms but does not exceed 1000 kms	1514-10
(iii) exceeds 1000 kms	***3675-00***

(b) In respect of vehicles permitted to ply as ordinary services for every passenger (other than the driver and conductor), which the vehicle is permitted to carry and where the total distance permitted to be covered by the vehicle in a day"

(i) does not exceed 100 kms	434-70
(ii) exceeds 100 kms but does not exceed 160 kms	611-10
(iii) exceeds 160 kms but does not exceed 240 kms	781-20
(iv) exceeds 240 kms but does not exceed 320 kms	913-50
(v) exceeds 320 kms	995-40

Provided that in respect of a reserve stage carriage or spare bus (by whatever name called) of an operator, the tax payable shall be at Rs.258-30 ps for every passenger other than driver and conductor which the vehicle is

permitted to carry, if the taxes for the corresponding period in respect of all the regular stage carriages covered by valid permits have been paid irrespective of the stoppage or otherwise of the vehicles.

Explanation – I

The number of persons or passengers which a vehicle is permitted to carry shall:

(i) In the case of a motor vehicle in respect of which a permit is granted under Motor Vehicles Act, 1988 be the number of persons or passengers which the motor vehicle is authorized to carry by the permits, and

(ii) In the case of a motor vehicle plying for hire or reward without permit granted under Motor Vehicles Act, 1988, be the maximum number of persons or passengers which the vehicle may be permitted to carry, if a permit was granted under the aforesaid Act.

Provided further that in the case of Motor Cab or a Motor Car misused as a stage carriage be the number of persons or passengers actually carried in the vehicle at the time of such misuse.

Explanation - II:-

(i) For the purpose of item 4 (iii) "town service" shall mean a route described under rule 258(2) of the Andhra Pradesh Motor Vehicles Rules and determined as such by the Transport Authority.

(ii) For the purpose of item 4(iii) (a) an express service shall mean a service on a town service route as described under Rule 258 of Andhra Pradesh Motor Vehicles Rules, 1989 and permitted to ply with limited halts as prescribed by the Transport Authority.

(iii) For the purpose of item 4(iv)(a) an "express service" shall have meaning of express stage carriage defined under Rule 2(b) of Andhra Pradesh Motor Vehicles Rules, 1989.

Explanation – III:-

The distance permitted to be covered by a Vehicle in a day shall:-

(i) In the case of a motor vehicle in respect of which a permit is granted under Motor Vehicles Act, 1988 be the distance authorized to be covered according to the permits.

(ii) In case of a Motor vehicle plying without a permit granted under Motor Vehicles Act, 1988 be reckoned, as above 1000 Kms.

Explanation – IV:-

Where in pursuance of any agreement between the Government of Andhra Pradesh and the government of any other State, tax in respect of any stage carriage plying on a route lying partly in the State of Andhra Pradesh and

partly in the other states, is payable to the Government of Andhra Pradesh only, the tax in respect of such vehicle shall be calculated on the total distance covered by the Stage Carriages on such route.

Explanation – V:-

Where a conductor is exempted to be carried in a stage carriage, for the words other than the driver and conductor occurring in item (iii) and (iv) shall be construed as other than driver only.

(v)(a) Vehicles permitted to carry more than Six (6) persons and plying as contract carriages covered by All India Tourist Permit issued under Section 88 (9) of the Motor Vehicles Act, 1988, for every passenger other than the Driver and Conductor/ Attender, which the vehicle is permitted to carry 3675-00

(aa) **Vehicles permitted to carry more than six (6) persons and plying as contract carriages on Inter-State routes for every passenger (other than the driver and conductor/attender) which the vehicle is permitted to carry 3675-00**

(b) Vehicles permitted to carry more than Six(6) passengers and plying as contract carriage on Intra State routes for every passenger (other Than driver) which the vehicle is permitted to Carry 2625-00

(c) Contract carriages plying within the Home District and any one contiguous district, For every passenger (other than driver) 1207-50

(d) Idle Contract Carriages not covered by any permit plying on the strength of temporary/ special permits issued under Section 87 or sub-section (8) of Section 88 of Motor Vehicles Act, per seat per quarter 892-50

(e) Contract carriages with a seating capacity of 8 in all to 13 in all covered by intra-state or inter-state permit for every passenger (other than driver) the vehicle is permitted to carry 630-00

Explanation-VI:-

(i) Where a motor cab or motor car having a seating capacity upto 6 in all is misusedas stage carriage, it shall attract tax at the lowest rate applicable to ordinary stage carriages operating on town services.

(ii) Where a motor cab having seating capacity of 7 in all is misused as stage carriage, it shall attract tax at the lowest rate applicable to ordinary stage carriage other than those operating on town services.

(iii) Where a maxi cab having seating capacity between 8 in all and 13 in all is misused as stage carriage it shall attract tax at the maximum rate applicable to ordinary stage carriage other than those operating on town service

(iv) ***Where contract carriages covered by inter-state, state wide, Districtwide permits and idle contract carriages are misused as stage carriages, tax at the rate of Rs.3675/- per seat per quarter shall be leviable***

The entire case of the respondents, as persuasively put across by the Learned Advocate General, rests on the premise that, under para 1 of G.O.Ms.No.180 dated 27.9.2006, a new category of vehicles is introduced i.e., "***vehicles exceeding 1000 KMs***" and that paragraphs 2 and 4 of the said G.O. create a legal fiction referable to the new category under Para 1. The question which must, therefore, be answered is whether Para 1 of G.O.Ms.No.180 dated 27.9.2006 does create a new class/category of vehicles i.e., "***vehicles exceeding 1000 K.Ms.***"

It is only on a permit being granted by the competent authority, under the Motor Vehicles Act, 1988 and the Rules made thereunder,

permitting the motor vehicle to ply as a stage carriage express service, and depending on the distance permitted to be covered by the said vehicle in a day are different rates of taxes prescribed. Section 2(j) of the A.P. Motor Vehicles Taxation Act, 1963 Act provides that words and expressions used but not defined in the Act shall have the meaning assigned to them in the Motor Vehicles Act, 1988. Section 2(31) of the Motor Vehicles Act, 1988 defines "permit" to mean a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under the Act authorizing the use of a motor vehicle as a transport vehicle. Under Section 72 (1), subject to the provisions of Section 71, the Regional Transport Authority, may, on an application made to it under Section 70, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit. Under sub-section (2) the Regional Transport Authority, while granting the permit, may attach to the permit any one or more of the conditions specified thereunder. As noted above, by Para 1 of G.O.Ms.No.180 dated 27.9.2006, Entry (iii) was inserted after entry (ii) to Item 4(iv)(a) of G.O.Ms.No.68 dated 13.4.2006. Item 4(iv)(a) relates to vehicles permitted to carry more than 6 passengers and plying as stage carriage express services for which different rates of tax are prescribed on the basis of the distance they are permitted to cover in a day. While the rate of tax of Rs.1146-60 is prescribed for these stage carriage express service vehicles permitted to cover a total distance not exceeding 320 KMs in a day, the rate of tax of Rs.1514-10 is prescribed where such vehicles are permitted to cover a distance exceeding 320 K.Ms. but not exceeding 1000 K.Ms. All that Para I of G.O.Ms.No.180 dated 20.7.2006 prescribes is that the rate of tax, for such stage carriage express service vehicles permitted to cover a daily distance exceeding 1000 K.Ms, shall be Rs.3675-00. Para 1 of

G.O.Ms.No.180 dated 27.9.2006 does not create a new class/category of motor vehicles but only prescribes the rate of tax for a stage carriage express service if, under the permit granted, it is permitted to cover a total distance exceeding 1000 K.Ms. in a day.

While Entry (a) of item 4(v) of the Schedule prescribes the rate of tax of Rs.3,675/- for vehicles permitted to carry more than six persons and plying as contract carriages covered by All India Permits, Entry (aa), as introduced by para 3 of G.O.Ms. No. 180 dated 27.09.2006, prescribes the rate of tax of Rs.3,675/- also to vehicles permitted to carry more than six persons and plying as contract carriages on interstate routes. By Paras 2 and 4 of G.O.Ms. No. 180 dated 27.09.2006 clauses (ii) and (iv) were inserted in Explanations III and VI respectively.

EXPLANATION TO A PROVISION : ITS SCOPE:

It is well settled that an Explanation added to a provision is not a substantive provision but, as the plain meaning of the word itself shows, is merely meant to explain or clarify certain ambiguities which may have crept in the provision. (**S. Sundaram Pillai Vs. V.R. Pattabiraman**[24], **Dipak Chandra Ruhidas Vs. Chandan Kumar Sarkar**[25]. The Explanation must be read so as to harmonise with the main Section. It should not be so construed as to widen the ambit of the Section. (**Bihta Cooperative Development and Cane Marketing Union Ltd Vs. Bank of Bihar**[26], **Baleshwar Mandal Vs. State of Bihar**[27]).

Item 4(v) of the Schedule prescribes, under clauses (a) and (aa), the rate of quarterly tax of Rs.3,675/- for contract carriage vehicles

plying under All India Tourist permit and interstate routes. Under clauses (b) to (e) of item 4(v), for contract carriages plying on intra-state routes, within the home district and one contiguous district, idle contract carriages etc., the rate of quarterly tax ranges between Rs.2,675/- to Rs.630/-. Explanation VI(iv) cannot be so read as to widen the scope of item 4(v) of the Schedule to the Act. An Explanation is not a substantive provision and cannot interfere with or change the enactment or any part thereof. Explanation VI, even after introduction of clause (iv) by para 4 of G.O.Ms. No. 180 dated 17.09.2006, is only to explain item 4(v) of the Schedule. Neither can the Explanation run counter to item 4(v) of the Schedule nor can it travel beyond the scope of Section 3-A of the Act. On a conjoint reading of Section 3-A and its proviso, where a vehicle is misused as a vehicle in another category, it is only the difference, between the tax already levied and collected and the tax which is leviable in respect of such a vehicle falling in another category, which can be levied as additional tax. While the additional tax which can be levied under Section 3-A is the differential tax, clause (iv) of Explanation VI to item 4(v), as inserted by para 4 of G.O.Ms. No. 180 dated 27.09.2006, prescribes the rate of tax of Rs.3,675/-, and not the differential tax. Explanation VI(iv) travels beyond the scope of and is ultravires Section 3-A of the Act and is liable to be quashed.

In **Hardev Motor Transport**[10], the Supreme Court observed that tax imposed on motor vehicles was regulatory and, while a tax may be imposed on a vehicle which is roadworthy and can be plied on a road, if the vehicle was not capable of being plied on the road no tax could be levied. On the question whether motor vehicle tax could be

levied as a penalty, the Supreme Court observed:-

"……If a permit has been granted, the holder of a permit is liable to comply with the conditions of permit. If he violates the terms and conditions of permit, law will take its own course. A permit is granted under the 1988 Act. If there is violation of the terms of permit, the consequences therefor, shall ensue as contained in Section 192-A of the 1988 Act. **A distinction must be borne in mind that a tax cannot be imposed by way of penalty although penalty can be imposed for non-payment of tax or evasion of tax. The State may make suitable legislations in this behalf. But the same would not mean that while specifying a rate of tax, the executive Government of the State can indirectly levy a penalty which it cannot do directly.** …….

……The transport authorities of the State indisputably have a power to check a vehicle so as to ascertain whether payment of tax is being evaded. They have been conferred with the power to detain a vehicle. They can release the vehicle only when tax as demanded is paid. Even the power of the court to release the vehicle has been taken away unless tax is paid and the court can satisfy itself as to whether a tax is paid or not only on the receipt of the certificate issued by the transport authorities of the State. The power of the transport authorities, therefore, is very wide. We, however, do not mean to suggest that only because a wide power has been conferred the same by itself would lead to a presumption that the same is capable of misuse or on that count alone the provisions of Article 14 of the Constitution of India would be attracted. But, when a statute confers a wide power upon a statutory authority, a closer scrutiny would be required.

The 1991 Act also does not make any provision for compliance with the principles of natural justice or for determination of a question as to whether the conditions of permit have been violated by an independent authority.

The appellants have paid tax. They have paid tax as specified for in permits granted in their favour as a contract carriage. The rate of tax payable by a contract carriage is higher than the rate of tax imposed on a stage carriage. For non-payment of tax or for payment of tax for a wrong purpose, a penalty can be imposed but it is difficult to conceive that a different rate of tax which is not contemplated under Section 3 of the 1991 Act can be imposed by way of penalty.

The interpretation clauses contained in the 1988 Act are incorporated in the 1991 Act by reference. The interpretation of the expressions "permit", "contract carriage" and "stage carriage" must, thus, be understood on the premise that the said expressions carry the same interpretation as contained in the 1988 Act……

…….As a logical corollary the mode and manner in which the permits are granted must necessarily be considered to be part of the provisions of the 1991 Act. Article 254(2) of the Constitution of India as such may not be attracted but it is a trite law that the executive while fixing a rate of duty cannot be permitted to usurp the legislative power and make a provision which would be inconsistent with the substantive provision of the statute. **In other words, the provisions contained in the Schedule must be in consonance with the substantive provisions in the main Act. It must be in conformity with the charging section. As in terms of Section 3 of the 1991 Act, the legislature directed that the tax can be levied on motor vehicles subject to the rates fixed; by taking recourse to Explanation (7), firstly, no new definition could be introduced and, secondly, an owner of a vehicle having one kind of permit could not have been treated as having no permit at all only because the transport authorities have reasons to believe that the conditions of permit have been violated**……..” (emphasis supplied).

Learned Advocate General would submit that a careful reading of the judgment of the Supreme Court in **Haridev Motor Transport**[10], would show that a penalty can be imposed on erring permit holders provided that the concerned charging section enables the authorities to do so. In **Haridev Motor Transport**[10] the appeals, filed by holders of contract carriage permits, were allowed on the ground that there was no charging section and it was held that, by way of a schedule or an Explanation, the substantive provision could not be extended. As in **Hardev Motor Transport**[10], in the case on hand also Explanation VI(iv) to Item No.4(v) of the Schedule to the Act travels beyond the scope of and is ultravires charging Section 3-A of the Act.

PROVISO TO A SECTION: ITS SCOPE:

Learned Advocate General would submit that a conjoint reading of Section 3-A and its proviso would show that its very purpose and object was to charge additional tax for misuse of permits or for plying without permits, that Section 3-A and its proviso cannot be operated unless and until the vehicle, as and when it is misused, is reckoned to

be falling under the newly created category of vehicles "***exceeding 1000 Kms***", that if a contract carriage vehicle, by paying more tax, is misused as a stage carriage, then section 3-A cannot be operated, the mischief sought to be arrested cannot be achieved and thereby the very purpose of introducing Section 3-A would be defeated. According to the Learned Advocate General, a new class/category of vehicle "***exceeding 1000 K.Ms***." was therefore introduced so that Section 3-A and its proviso could be made workable. Learned Advocate General would rely on **Hindustan Ideal Insurance Co. Ltd Vs. Life Insurance Corporation of India**[28] to submit that the proviso to a Section cannot be interpreted to nullify the effect of the main Section itself as a tail cannot wag the head and the proviso can only be interpreted to give meaning to the Section. He would submit that a purposive construction has to be given while interpreting statutory provisions and it is the duty of the Court to make the provisions of the Act workable. He would rely on **Kesho Ram and Co. Vs. Union of India**[29], **Indian Handicrafts Emporium Vs. Union Of India**[30], **Andhra Bank Vs. B. Satyanarayana**[31] and **Pratap Singh Vs. State Of Jharkhand**[32] in this regard.

For Section 3-A to apply, the motor vehicle must have been specified in one category or class in the notification issued under Section 3. Such a vehicle must be have been misused, or used not in accordance with the purpose for which it was registered or permit granted, as a vehicle in another category. It is only in such cases of misuse can a higher rate of tax be imposed, as additional tax, as a vehicle falling in another category. For instance, if a contract carriage vehicle is misused as a stage carriage vehicle then, under Section 3-A(1), the State Government is empowered to impose an additional tax

at the higher rate of tax applicable to stage carriage vehicles. Under the proviso to Section 3-A (1), such additional tax can be levied for a sum equal to the difference of the amount between the tax already levied and collected and the tax which shall be leviable in respect of such vehicle falling in another category. The effect of the proviso is that, if a contract carriage vehicle is misused as a Stage carriage vehicle, then the additional tax which can be levied is for a sum equal to the difference between the tax already paid as a contract carriage vehicle and the tax which is leviable in the category of stage carriage vehicles.

As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and, ordinarily, a proviso is not interpreted as stating a general rule. (**S. Sundaram Pillai**[23], **Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subhash Chandra Yograj Sinha**[33]). The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out from the main enactment a portion which, but for the proviso, would fall within the main enactment. Ordinarily, it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. A proviso must be considered in relation to the principal matter to which it stands as a proviso and must be construed harmoniously with the main enactment. (**Abdul Jabar Butt Vs. State of Jammu & Kashmir**[34], **Ram Narain Sons Ltd. Vs. Assistant Commissioner of Sales Tax**[35], **CIT Vs. Indo-Mercantile Bank Ltd.**[36]). The territory of a proviso is to carve out an exception to the main enactment and exclude something which

otherwise would have been within the section. It has to operate in the same field and, if the language of the main enactment is clear, it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. (**Corporation of City of Toronto Vs. Attorney-General for Canada**[37], **Indo-Mercantile Bank Ltd**[36]). A proviso is, normally, in the nature of a qualification or exception and does not wholly nullify the provision to which it is a proviso, for an exception cannot be allowed to swallow up the general rule. (**Raghuthilakathiratha Sreepadangalavaru Swami Vs. State of Mysore**[38], **Director of Education Vs. Pushpendra Kumar**[39], **Madan Gopal Vs. VI Addl. District Judge**[40]). A proviso cannot be torn apart from the main enactment. The effect of an exception or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which, but for the proviso, would be within it. The natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. (**S. Sundaram Pillai**[24], **Ishverlal Thakorelal Almaula Vs. Motibhai Nagjibhai**[41] **Madras and Southern Mahrata Railway Co. Ltd. Vs. Bezwada Municipality**[42]).

The proviso qualifies Section 3-A(1) and limits the additional tax which can be levied therein to the difference between the tax already collected and the tax leviable in respect of such vehicle falling in another category. But for the proviso, the additional tax leviable under

Section 3-A would be the tax applicable to the other category which the vehicle was misused as and not the differential tax. Explanation VI(iv) of the Schedule could have been upheld only if Section 3-A(1), without its proviso, was held applicable. What the learned Advocate General would ask us to do, which we have no doubt that we cannot, is to read Section 3-A in such a manner as to ignore the proviso and make it redundant and an inapposite surplussage.

The underlying premise of Section 3-A and its proviso is that the rate of tax prescribed for the misuse of a vehicle is higher than the rate of tax applicable for the use of the vehicle in accordance with the purpose for which it was registered or the conditions subject to which a permit was issued for such a vehicle. Section 3-A and its proviso can have no application where the rate of tax applicable to the vehicle used in accordance with its permit is higher than the rate of tax specified for its misuse as a vehicle in another category.

TAXING STATUTES: ITS PROVISIONS MUST BE STRICTLY CONSTRUED:

To make Section 3-A and its proviso workable, Learned Advocate General would have us read them in a manner which, on a plain and natural meaning given thereto, cannot be read at all. In interpreting taxing statutes, one must have regard to the strict letter of the law. (**Geo Miller & Co. (P) Ltd. Vs. State of M.P.**[43]). If the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or analogy. A taxing statute demands strict construction. It must never be stretched against a taxpayer. (**Commissioner of Central Excise,**

Pondicherry Vs. ACER India Ltd.[44]). If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the subject cannot be brought within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. There is no room for any intendment. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. (**CIT Vs. Kasturi & Sons Ltd.**[45]). The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. Equally impermissible is an interpretation which does not follow from the plain unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. (**Mathuram Agrawal Vs. State of M.P.**[46]).

Courts must adhere to the words of the statute and construe the provisions of the taxing enactments according to the ordinary and natural meaning of the language used. It must be interpreted as it reads, with no additions and no subtractions, on the ground of legislative intendment or purpose or otherwise. (**V.V.S. Sugars Vs. Govt. of A.P**[47], **Vikrant Tyres Vs. First I.T.O, Mysore**[48]). In each case the court must take the taxing statute as it stands, subject to all its imperfections. If a transaction does not fairly fall within the letter of the law, the court will not seek to put a strained construction to bring it within the law. (**Yeshwant Rao Vs. Wealth Tax Commissioner**[49]).

The court cannot proceed to make good the deficiencies, if there be any, in the statute. It shall interpret the statute as it stands and in case of doubt, it shall interpret it in a manner favourable to the tax payer (**C.A. Abraham Vs. Income Tax Officer, Kottayam**[50]). In considering a taxing Act, the court is not justified in straining the language in order to hold a subject liable to tax. (**The State of Punjab Vs. M/s Jullundur Vegetables Syndicate**[51]). Since the language of Section 3-A is unambiguous and clear, we cannot read it in such a manner as to strain its language or to give it, as the Learned Advocate General would contend it to be our duty, a "purposive construction".

OTHER CONTENTIONS:

We do not propose to examine the petitioners' contention that it is impossible to operate a vehicle exceeding 1000 Kms in a day as we are in agreement with the submission of the Learned Advocate-General that no cogent material has been placed before us to establish that it is not possible for a vehicle to ply 1000 KM or more in a day.

We must also express our inability to agree with the petitioners contention that vehicles plying with a permit cannot be treated as a case of no permit as Section 3-A, in effect, equates the two. Reliance placed on certain observations made by the Full Bench of this Court, in **Kanapala Rama Rao Vs. Regional Transport Officer**[52], is misplaced as the said judgment was rendered prior to introduction of Section 3-A in the Act and the observations, which the petitioners rely upon, were made in the context where there was no statutory provision in this regard.

ABSENCE OF A MACHINERY TO ADJUDICATE WHETHER A VEHICLE HAS BEEN MISUSED OR USED CONTRARY TO THE PURPOSE FOR WHICH IT WAS REGISTERED OR THE PERMIT

ISSUED

It is urged on behalf of the petitioners that misuse of a vehicle, or using it for purposes other than for which a permit is granted, is a condition precedent for imposition of additional tax under Section 3-A of the Act and Explanation VI (iv) of G.O.Ms.No.180 dated 27.9.2007, that such allegations are to be adjudicated upon and a finding recorded as to the truth or otherwise of the allegation, that adjudication is a quasi judicial function and that no machinery is provided either in the Act or the rules for adjudicating whether the vehicle has been used/misused contrary to the permit conditions. It is contended that G.O.Ms.No.180 dated 27.9.2006 should either be struck down or the respondents directed to forbear from taking action under Section 3-A until a notification is issued thereunder and a machinery is provided for adjudication on the question whether the vehicle has been misused or not.

Learned Advocate-General would contend that not having a mechanism to fulfill the requirements of principles of natural justice cannot be a ground to set aside statutory provisions and that courts should read principles of natural justice into the Section. He would rely on **Government of Mysore Vs. J.V. Bhat**[53] and **The Scheduled Caste and Weaker Section Welfare Association Vs. State of Karnataka**[54].

In the additional counter-affidavit, filed on behalf of the respondents, it is stated that where the Motor Vehicles Inspector, on inspection of a vehicle, finds misuse of the permit or that the vehicle is being plied without a permit, he prepares a check report in triplicate and furnishes a copy thereof to the driver of the vehicle, that the check report is to be signed by the driver and on occasions passengers are

also requested to sign the check report, that the Motor Vehicles Inspector then seizes the vehicle directing the driver to approach the licensing authority for release, that the licensing authority i.e., the Regional Transport Officer or the Deputy Transport Commissioner, on receipt of the check report, issues a show-cause notice, based on the violations alleged, requiring the licensee to pay the additional tax and, upon receipt of the reply, the licensing authority passes a reasoned order determining the liability. It is stated that, though there is no special machinery provided under the Act or the rules for determining liability, the above said procedure is followed invariably in all cases with a view to comply with the rules of natural justice and that in no case is tax liability mulcted on a licensee without giving him a reasonable opportunity of defending himself. It is stated that the Inspecting Officer and the Licensing Authority, who is competent to adjudicate, are two different officers and the competent authority is much higher in rank than the inspecting officer. According to the respondents no prejudice can be said to be caused to the petitioners merely because the Act and the Rules do not specifically provide for any such procedure. It is contended that absence of a mechanism to adjudicate, whether or not a vehicle has been misused or used without a permit, would not render the statute unconstitutional.

Learned Advocate General would reiterate that the principles of natural justice are being adhered to by the State, as detailed in the additional counter affidavit, and that in no case would any one be penalized without being given the opportunity to explain his case.

STAGES IN IMPOSITION OF TAX:

There are three stages in the imposition of a tax. The first is the declaration of liability, that is the part of the statute which determines what persons are liable. Next, there is the assessment. Liability does not depend on assessment, that ex-hypothesi has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly comes the method of recovery if the person taxed does not voluntarily pay. (**Chatturam Vs. CIT**[55], **Whitney Vs. IRC**[56] and **Harshad Shantilal Mehta Vs. Custodian**[57]).

TAXES CAN NEITHER BE LEVIED NOR COLLECTED EXCEPT BY AUTHORITY OF LAW:

Article 265 of the constitution of India imposes a limitation on the taxing power of the State in so far as it provides that the State shall not levy or collect a tax except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law alone. (**K.T. Moopil Nair Vs. State of Kerala**[58]. The authority of law, which Article 265 refers to, and under which alone a tax can be levied, is to be found in Article 245 read with the corresponding legislative entries in Schedule VII. (**Atiabari Tea Co. Ltd.**[7]). While Section 3-A, a valid law, would enable the Government to levy additional tax in the circumstances specified in the Section itself, it is well to remember that under Article 265 of the Constitution not only the levy but also the collection of a tax must be under the authority of law. The expression “levy and collection” is used in Article 265 in a comprehensive sense and is intended to include the entire process of taxation commencing from the taxing statute to the taking away of the money from the citizen. What the Article enjoins is that every stage in this entire process must be authorised by law. (**District Mining Officer Vs. Tata Iron and Steel Co.**[59]). While the power to

levy additional tax has been conferred on the government, by Section 3-A of the Act, in the absence of a machinery being prescribed by law to adjudicate whether in a given case additional tax under Section 3-A can be levied or not, or a procedure being prescribed by law for collection of the assessed additional tax, additional tax can neither be levied nor collected. It is implicit in Article 265 of the Constitution that the procedure for imposing the liability to pay a tax has to be prescribed by law and that such prescription must be strictly adhered to. Where it is not so complied with, the liability to pay the tax cannot be said to be in accordance with law. (**Municipal Council, Khurai v. Kamal Kumar**[60]).

In **The Scheduled Caste and Weaker Section Welfare Association**[54], the Supreme Court held that when a declaration is made under Section 3 and a further declaration is made under Section 11 of the Karnataka Slum Areas (Improvement and Clearance) Act, 1973, the inhabitants of the areas would be affected and any further action in relation to the area which is declared to be a slum clearance area, without affording such persons an opportunity of being heard, would prejudicially affect their rights. The Supreme Court held that when a notification is issued, rescinding the earlier notification without hearing the affected parties, it was in clear violation of principles of natural justice.

In **J.V.Bhat**[53], the Supreme Court held that there was nothing in Sections 3 and 9 of the Mysore Slum Areas (Improvement and Clearance) Act which debarred application of principles of natural justice and that the notification issued by the authorities was liable to be struck down if they did not observe principles of natural justice while exercising their statutory powers.

In both the aforementioned judgments, the statutes in question

were not tax/fiscal statutes. As noted above, under Article 265 of the Constitution of India no tax can be levied/collected by executive fiat and without authority of law. Since no machinery has been, admittedly, provided by law, the laudable intentions in the counter-affidavit notwithstanding, additional tax under Section 3-A can neither be imposed nor collected.

The State Government and its officials shall forbear from taking action to levy and collect additional tax under Section 3-A of the Act till a notification is issued in accordance therewith and a machinery is provided by law not only for its adjudication but also for its collection. The amounts, if any, paid by the petitioners pursuant to the interim orders of this Court shall be refunded to them.

The writ petitions are, accordingly, disposed of. However, in the circumstances, without costs.

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BILAL NAZKI, ACJ

Date: .11.2007

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RAMESH RANGANATHAN, J

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[1] 2004(2) ALD 225
[2] AIR 1992 Rajasthan 181
[3] (2004)1 SCC 320
[4] AIR 1988 SC 240
[5] (1996) 9 SCC 284
[6] AIR 1975 SC 17
[7] AIR 1961 SC 232
[8] AIR 1962 SC 1406
[9] 2006(11) SCALE 28
[10] 2006(8) SCC 613
[11] AIR 1967 SC 1575
[12] 1984(1) SCC 168
[13] AIR 1996 SC 1627
[14] AIR 1976 SC 1031
[15] (1970) 1 SCC 749
[16] AIR 1965 SC 1387
[17] 1995 Suppl (2) SCC 187

[18] AIR 1980 SC 1547
[19] (2001) 3 SCC 654
[20] (2001) 3 SCC 654
[21] 1959 (1) AnW.R. 347
[22] 1992(3) SCC 336
[23] (1985) 2 SCC 732
[24] (1985) 1 SCC 591
[25] (2003) 7 SCC 66)
[26] AIR 1967 SC 389
[27] AIR 1977 SC 3471
[28] AIR 1963 SC 1083
[29] (1989) 3 SCC 151
[30] 2003(7) SCC 589
[31] 2004(2) SCC 657
[32] 2005(3) SCC 551
[33] AIR 1961 SC 1596
[34] (1957) SCR 51
[35] (1955)2 SCR 483
[36] 1959 Supp (2) SCR 256
[37] (1946) AC 32
[38] AIR 1966 SC 1172
[39] AIR 1998 SC 2230
[40] AIR 1989 SC 155
[41] (1966)1 SCR 367
[42] (AIR 1944 PC 71)
[43] (2004) 5 SCC 209
[44] 2004(8) SCC 173
[45] (1999) 3 SCC 346
[46] (1999) 8 SCC 667
[47] (1999)4 SCC 192
[48] 2001(3) SCC 76
[49] AIR 1967 SC 135
[50] AIR 1961 SC 609
[51] AIR 1966 SC 1295
[52] 2001(6) ALD 402 (FB)
[53] AIR 1975 SC 596
[54] AIR 1991 SC 1117
[55] (1947) 15 ITR 302
[56] 1926 AC 37
[57] AIR 1998 SC 2291
[58] (AIR 1961 SC 552)
[59] (2001) 7 SCC 358

[60] AIR 1965 SC 1321